



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 12, 2016

Mr. Robert W. Patterson
Open Records Coordinator
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

Dear Mr. Patterson:

This is to acknowledge your letter of September 28, 2016, in which you withdraw your request for an open records decision regarding specified contract award documentation. Your request for an open records decision was assigned ID# 632365.

Based on your representation that you wish to withdraw your request for an open records decision because you have released all of the responsive information to the requestor, this office will consider this matter closed. If you have any questions with regard to this letter, please refer to ID# 632365.

Sincerely,

A handwritten signature in black ink, appearing to read "KMcW".

Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 632365

c: Requestor



OFFICE OF THE ATTORNEY GENERAL
OPEN RECORDS DIVISION

P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 936-OPEN [6736]

Date: August 30, 2016
Please deliver to: Jonathan Miles
Texas Health and Human Services Commission
Facsimile number: 512-424-6586
Re: Request for information regarding Healthy Texas Women contract awards
Reference# OR-20160811-11494, HHSC contract award documentation and
any attendant supporting documentation, etc.

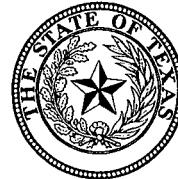
This acknowledges receipt of your correspondence dated August 25, 2016, in which you request an open records decision regarding an open records request from Andrea Grimes. Your correspondence has been assigned ID# 632365. Please reference this ID# for any further correspondence regarding this matter.

REMINDER: The Public Information Act provides specific deadlines for the submission of certain materials to this office. If you have not already done so, within ***ten business days*** of your receipt of the open records request, you must provide the requestor with 1) a written statement that you wish to withhold the requested information and have asked for an attorney general decision and 2) a copy of your written communication to the attorney general asking for a decision or a redacted copy of that written communication if it discloses the requested information. Gov't Code § 552.301(d). Also, if release of a person's proprietary information is implicated, you must notify that person in writing of the request for an attorney general decision within ***ten business days*** of your receipt of the open records request and include the information mandated by Gov't Code § 552.305(d)(2).

If you have not already done so, you must submit to this office within ***fifteen business days*** of your receipt of the open records request:

- 1) arguments explaining why stated exceptions apply,
- 2) a copy of the open records request,
- 3) a signed statement or sufficient evidence of date the agency received the open records request, or
- 4) the specific information requested or a representative sample of the information. It is not appropriate to submit a representative sample when section 552.110 is implicated.

Id. § 552.301(e). Lastly, within ***fifteen business days*** of your receipt of the open records request, you must provide the requestor with a copy of your written comments submitted to this office stating the reasons why the stated exceptions apply that would allow the information to be withheld. *Id.* § 552.301(e-1). If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy. *Id.*



RECEIVED
SEP 29 2016
OPEN RECORDS DIVISION

632365
637342

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHARLES SMITH
EXECUTIVE COMMISSIONER

September 28, 2016

Justin Gordon
Office of the Attorney General
Open Records Division
Price Daniel, Sr., State Office Building
P.O. Box 12548
Austin, Texas 78711

Re: **AG ID# 632365**

Dear Mr. Gordon:

On August 25, 2016, the Health and Human Services Commission (the Commission) requested an open records decision from your office regarding a request for information received from Andrea Grimes of The Texas Observer. A copy of Ms. Grimes' request was enclosed with our August 25 correspondence.

Since that time we have released the requested information to Ms. Grimes. A ruling from your office is therefore no longer necessary, and we are withdrawing our request for an open records decision regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Patterson".

Robert W. Patterson
Open Records Coordinator



RECEIVED
AUG 26 2016
OPEN RECORDS DIVISION

OR-632365-16
632365

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

August 25, 2016

CHARLES SMITH
EXECUTIVE COMMISSIONER

Justin Gordon
Office of the Attorney General
Open Records Division
Price Daniel, Sr., State Office Building
P.O. Box 12548
Austin, Texas 78711

Re: Request for open records decision

Dear Mr. Gordon:

On August 11, 2016, the Health and Human Services Commission (the Commission) received an open records request from Andrea Grimes of The Texas Observer. A copy of Ms. Grimes' request is enclosed as **Exhibit A**.

The Commission is still in the process of gathering the requested documents. Until such time that the Commission is able to review the documents at issue, we wish to invoke all of the exceptions to required public disclosure, Government Code sections 552.101 – 552.154. The Commission will provide your office with copies of the documents we wish to withhold and our arguments for non-disclosure within the statutory timeframe established under section 552.301 of the Government Code.

If your staff has any questions about this correspondence, please contact Robert Patterson, Open Records Coordinator, at 512-424-6910.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Miles".

Jonathan Miles
Open Records Attorney

Enclosure

cc: Andrea Grimes
(via email)
(w/o enclosure)



STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

§

Before me, the undersigned authority, on this day appeared Robert W. Patterson, personally known to me, who being by me duly sworn, deposed as follows:

My name is Robert W. Patterson. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit. I am the Open Records Coordinator with the Office of General Counsel, Texas Health and Human Services Commission. In my official capacity as Open Records Coordinator, I deposited in the interagency mail 1) a request for an open records decision regarding a request for information received by the Commission from Andrea Grimes and 2) a copy of the open records request. I deposited these materials in the interagency mail, addressed to the Open Records Division of the Office of the Attorney General, on August 25, 2016.

FURTHER, AFFIANT SAYETH NOT.

A handwritten signature of Robert W. Patterson.

Robert W. Patterson

SWORN TO AND SUBSCRIBED before me on this the 25th day of AUGUST, 2016.

A handwritten signature of Nikkol Camarillo.

Notary Public in and for
the State of Texas

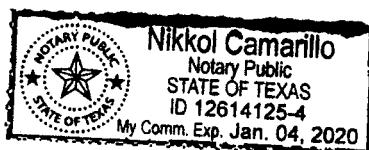


EXHIBIT A

Patterson,Robert (HHSC)

From: Black,Bryan (HHSC)
Sent: Thursday, August 11, 2016 12:51 PM
To: HHSC Open Records Request; Andrea Grimes
Subject: FW: Public information request - Healthy Texas Women contract awards Ref. No. OR-20160811-11494

Andrea,

I am forwarding this to our open records office and they can determine if they can combine it with your original request or make it a separate. Thank you.

From: Andrea Grimes [mailto:<mailto:>]
Sent: Thursday, August 11, 2016 12:43 PM
To: Black,Bryan (HHSC) <Bryan.Black@hhsc.state.tx.us>
Subject: Re: Public information request - Healthy Texas Women contract awards

Hi, Bryan -

Wanted to make a short addition to this PIR, though I'll happily file another separately if that's easier for you. Additions are in bold.

I respectfully request copies of or access to the following information:

- HHSC contract award documentation and any attendant supporting documents responsive to or concerning this Health Texas Women open enrollment call (http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=124812) including but not limited to bid queries, solicitation packages, reimbursement projections, services projected to be rendered or to be rendered, **e-mails, memoranda and other communications between employees or agents of HHSC**, etc., for the following entities:

Harris County Public Health and Environmental Services (HCPHES)

5815 Antoine Drive

Houston, TX 77091

The Heidi Group dba Wellness Coalition

3234 Northwestern

San Antonio, TX 78238

UTMB Regional Maternal and Child Health Program

950 Washington Blvd.

Beaumont, TX 77705

Houston Health Department

1809 N. Main

Houston, TX 77009

Collins Family Planning Clinic

2900 SE Loop 820

Fort Worth, TX 76140

Harris County Public Health and Environmental Services (HCPHES)

5815 Antoine Drive

Houston, TX 77091

In, sum, I'm looking for detailed contract awards and documentation of services rendered or expected to be rendered under HTW by each of these entities per their bids, and **attendant supporting documentation including emails and memos from HHSC agents or employees concerning those bids and packages**. I would like copies of or access to all records that can be released, even if redactions are required. I would prefer to receive these records electronically, by email to

Since time is a factor, please communicate with me by telephone or email rather than by mail. My telephone number is 817-925-5257.

Disclosure of this information is in the public interest because providing a copy of the information primarily benefits the general public. I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act.

I look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

Best,
Andrea

On Wed, Aug 10, 2016 at 9:56 AM, Andrea Grimes <

> wrote:

Hi, Bryan -

Andrea Grimes from the *Texas Observer*, here.

This request is made under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public's access to information in the custody of governmental agencies. I respectfully request copies of or access to the following information:

- HHSC contract award documentation and any attendant supporting documents responsive to or concerning this Health Texas Women open enrollment call (http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=124812) including but not limited to bid queries, solicitation packages, reimbursement projections, services projected to be rendered or to be rendered, etc., for the following entities:

Harris County Public Health and Environmental Services (HCPHES)

5815 Antoine Drive

Houston, TX 77091

The Heidi Group dba Wellness Coalition

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UTMB Regional Maternal and Child Health Program

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Houston, TX 77009

Collins Family Planning Clinic

2900 SE Loop 820

Fort Worth, TX 76140

Harris County Public Health and Environmental Services (HCPHES)

5815 Antoine Drive

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In, sum, I'm looking for detailed contract awards and documentation of services rendered or expected to be rendered under HTW by each of these entities per their bids. I would like copies of or access to all records that can be released, even if redactions are required. I would prefer to receive these records electronically, by email to

Since time is a factor, please communicate with me by telephone or email rather than by mail. My telephone number is 817-925-5257.

Disclosure of this information is in the public interest because providing a copy of the information primarily benefits the general public. I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act.

I look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

Best,
Andrea

--
:: Andrea Grimes :: Digital Editor
:: *The Texas Observer* :: www.texasobserver.org
:: mobile 817-925-5257 :: office 512-477-0746
:: twitter @andreagrimes :: skype ab_grimes

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ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2013

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2013-03610

Dear Mr. Connelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. Your request was assigned ID# 480372 (DSHS File 020944/2012).

The Texas Department of State Health Services (the “department”) received a request for inspection reports for certain named abortion clinics during a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department’s procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the department received the request for information on November 20, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was December 6, 2012, and its fifteen-business-day deadline was December 13, 2012. However, you did not request a ruling from this office or submit the information at issue until December 21, 2012. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the department's claim under section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument under this exception.

Next, we note you have not submitted responsive inspection reports for four of the named abortion clinics. Thus, to the extent any such information existed when the department received the present request, we assume it has been released. If such information has not been released, you must do so at this time. *See Gov't Code §§ 552.301, .302, see also* Open Records Decision No. 664 (2000) (if governmental body determines no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the Texas Abortion Facility Reporting and Licensing Act, chapter 245 of the Health and Safety Code. Section 245.011(d) provides:

Except as provided by Section 245.023, all information and records held by the department under [chapter 245 of the Health and Safety Code] are confidential and are not open records for the purposes of [the Act]. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;
- (2) with the consent of each person, patient, and abortion facility identified in the information released;
- (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or
- (4) to appropriate state licensing boards to enforce state licensing laws.

Health & Safety Code § 245.011(d). Section 245.023 of the Health and Safety Code provides in part:

- (a) The department on request shall make the following information available to the public:
 - (1) the status of the license of any abortion facility;
 - (2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and
 - (3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

...

- (e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

Id. § 245.023(a), (e). You state the information you have highlighted, which pertains to abortion facilities, is governed by chapter 245 of the Health and Safety Code. You assert the current request does not fall within the four types of disclosure permitted under

section 245.011(d) and the information is not subject to section 245.023. Accordingly, the department must withhold the highlighted information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 480372

Enc. Submitted documents

c: Requestor
(w/o enclosures)

RECEIVED

DEC 21 2012

OPEN RECORDS DIVISION



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

P.O. Box 149347
Austin, Texas 78714-9347
1-888-963-7111
TTY: 1-800-735-2989
www.dshs.state.tx.us

December 21, 2012

MR-48037212
480372

Via INTER AGENCY MAIL

Amanda Crawford
Office of the Attorney General-Open Records Division
209 W. 14th Street, 6th Floor
Austin, Texas 78701

Re: Request regarding reports for abortion clinics from Kelli Naatz
DSHS File: 020944/2012

Dear Ms. Crawford:

By this letter, the Texas Department of State Health Services (DSHS or department) requests an opinion from the Office of the Attorney General of Texas (OAG) whether certain portions of the surveys or inspection reports of two abortion facilities in Texas are exempt from disclosure under the Texas Public Information Act (Act), Chapter 552 of the Texas Government Code. TEX. GOV'T CODE §552.301.

Attached as Exhibit A is a request for information from Kelli Naatz, which the department received on November 20, 2012. Ms. Naatz has requested a copy of the most current inspection reports for listed abortion clinics and inspections that took place between January 1, 2010 and the present. Some of the facilities are ASCs that do abortions. More specifically for reports on Planned Parenthood of Austin, Texas ASC, Inc., Whole Women's Health of San Antonio. The three inspection reports are attached as Exhibit B.

Abortion facilities in Texas are governed by Chapter 245 of the Texas Health and Safety Code (HSC) and Title 25, Chapter 139, of the Texas Administrative Code (TAC). The Department asserts that those portions of the two reports, Exhibit B, that are highlighted are confidential pursuant to HSC § 245.011(d) and may not be disclosed. This section of the HSC Code states:

(d) Except as provided by Section 245.023, all information and records held by the department under this chapter are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;
- (2) with the consent of each person, patient, and abortion facility identified in the information released;
- (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or
- (4) to appropriate state licensing boards to enforce state licensing laws.

As Ms. Naatz has not and can not meet the limited exceptions 1 through 4 above which permit disclosure, the department may not release those portions of Exhibit B, the reports, which are highlighted.

Further, a review of Exhibit B also will show that the highlighted portions of the two surveys do not fall within the limited exemption of section 245.023(a)(2) of the HSC (recognized under section 245.011(d)), which requires disclosure. HSC § 245.023(a)(2) provides, in pertinent part, that “any violation discovered during that [last] inspection that would **pose a health risk to a patient at the facility**” is to be disclosed. [Emphasis added.] A violation of this kind, as well as “any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation,” also are to be disclosed. TEX. HEALTH & SAFETY CODE § 245.023(a)(2).

The department takes the position that most violations of its abortion facility rules “**pose a health risk to a patient at the facility**,” and, therefore, are to be disclosed. [Emphasis added.] In particular, the Department routinely discloses those portions of inspection reports citing violations of the following rules governing abortion facilities: 25 TAC §§ 139.41; 139.42(a)(1) and (2); 139.44; 139.46 through 139.49; 139.51 through 139.54; and 139.56 through 139.60. The only violations the department has determined do **not** pose a health risk to a patient at the facility – and therefore are not required to be disclosed -- are those regarding the following rules: 25 TAC §§ 139.42(a)(3) and (b); 139.43; 139.45; 139.50; and 139.55. Those portions of the two inspection reports that are highlighted address violations and corrective action plans analogous to violations of rule 25 TAC § 139.50 titled “Disclosure Requirements”. This rule sets forth certain information the facility is to provide to a woman on whom an abortion is to be performed during the initial visit.

Because the information highlighted on Exhibit B addresses violations that are similar to violations of disclosure rule 25 TAC § 139.50, violations that do **not** pose a health risk, the information fails to qualify as an exemption under HSC § 245.023(a)(2) from the broad confidentiality provision of HSC § 245.011(d). Thus, those portions of the two inspection reports which are highlighted in Exhibit B are confidential by law. TEX. HEALTH & SAFETY CODE § 245.011(d); TEX. GOV’T CODE § 552.101.

Amanda Crawford
Page 3 of 5 [DSHS File: 21087/2012]
December 21, 2012

The Department asserts that the reasons for withholding the information are compelling. The presumption in favor of disclosure is overcome because the requested information is confidential as a matter of law pursuant to the following statutes: TEX. HEALTH & SAFETY CODE § 245.011(d) and TEX. GOV'T CODE § 552.101.

The Department asks the Attorney General for a decision on the confidentiality of those portions of Exhibit B which have been highlighted. If you have questions, please feel free to contact me at (512) 776-6683.

Respectfully,



Marc Allen Connelly
Assistant General Counsel

DSHS File: 021087/2012

Enclosures

cc: Kelli Naatz
820 S. 4th Ave. Apt. 201
Albert Lea, MN 56007
(without enclosures)

To the Requester: The Department seeks to withhold the requested information as described above. The Department has asked the Attorney General to determine whether the information falls within an exception to public disclosure. This letter is your copy of the Department's written communication to the Attorney General.

Amanda Crawford
Page 4 of 5 [DHS File: 21087/2012]
December 21, 2012

Exhibit A

Request Rachel Rodriguez submitted to the Department on November 20, 2012



November 16, 2012

99920130835

Texas Department of State Health Services
Facility Licensing Group/ MC 2835
Pamela Adams, Program Specialist
P.O. Box 149347
Austin, TX 78714-9347

Dear Ms. Adams:

I am making a request for documents under the Texas Public Information Act.

I am seeking Health Facility Licensing and Compliance Enforcement Action reports for the following abortion clinics for inspections that took place between January 1, 2010 and present.

- Austin Women's Health Center
1902 S. I.H. 35, Austin, TX 78704
- International Healthcare Solutions
9805 Anderson Mill Rd., Austin, TX 78750
- Planned Parenthood South Austin
201 East Ben White Blvd., Austin, TX 78704
- Whole Women's Health of Austin
8401 N. I.H. 35, Austin, TX 78753
- Whole Women's Health
440 18th St. Beaumont, TX 77706
- Bryan Health Center-Planned Parenthood
4112 E. 29th St, Ste 200, Bryan, TX 77802
- Office of Dr. Eduardo L Aquino & Dr. Keno
1901 Morgan Ave., Corpus Christi, TX 78404
- Abortion Advantage
1929 Record Crossing Rd., Dallas, TX 75235
- Northpark Medical Group
8363 Meadow Rd., Dallas, TX 75231
- Planned Parenthood Surgical Health Services of North Texas
7424 Greenville Ave. # 211, Dallas, TX 75231

Received

NOV 20 2012

DSHS/RLU/FLG

P.O. Box 2050
Round Rock, Texas 78680
Tel: 512.255.2088
Fax: 512.255.2582

info@heidigroup.org
www.heidigroup.org

- **Routh Street Women's Clinic**
4321 N. Central Expressway, Dallas, TX 75235
- **Southwestern Women's Surgery Center**
8616 Greenville Ave. Ste 101, Dallas, TX 75243
- **Hilltop Women's Reproductive Center**
500 E. Schuster Ave. # B, El Paso, TX 79902
- **Reproductive Services**
730 E. Yandell Dr., El Paso, TX 79902
- **Henderson Clinic-Planned Parenthood**
301 S. Henderson St., Ste A, Fort Worth, TX 76104
- **Whole Women's Health, (formerly Trinity Valley Women's Center)**
1717 S. Main St. – Fort Worth, TX 76110
- **West Side Clinic**
2011 Las Vegas Trail, Fort Worth, TX 76108
- **Reproductive Services**
613 W. Sesame Dr., Harlingen, TX 78550
- **A Affordable Women's Medical Center**
7007 North Freeway – Houston, TX 77076
- **AAA Concerned Women's Center**
7324 Southwest Frwy, Houston, TX 77074
- **Aaron Women's Clinic**
5607 Schumacher Lane, Houston, TX 77057
- **Texas Ambulatory Surgical Center (Aaron Women's Surgical Center)**
2505 North Shepherd, Houston, TX 77008
- **Alto Women's Center**
6671 Southwest Freeway STE 450, Houston, TX 77074
- **Houston Women's Clinic**
4820 San Jacinto St., Houston, TX 77004
- **Planned Parenthood Center For Choices Surgical Services**
4600 Gulf Fwy, Ste 300, Houston, TX 77023
- **Suburban Women's Clinic**
3101 Richmond Ave. # 250, Houston, TX 77098

- Women's Medical Center
17070 Red Oak # 505, Houston, TX 77090
- Women's Services
4315 Lockwood Dr. # 1, Houston, TX 77026
- Killeen Womens Health Center (formerly Aaron Women's Health Center)
3106 S WS Young Blvd, Bldg C, Ste 302, Killeen, TX 76542
- Planned Parenthood (formerly Aaron Women's Health Center)
3302 67th St., Lubbock, TX 79413
- Whole Women's Health of McAllen
802 S. Main St., McAllen, TX 78501
- Midland Byerley Center-Planned Parenthood
316 Secor, Midland, TX 79701
- Alamo Women's Clinic
8600 Wurzbach Rd. # 900E, San Antonio, TX 78240
- All Women's Medical Center
8600 Wurzbach Rd. # 1206, San Antonio, TX 78240
- New Women's Clinic
419 San Pedro Ave., San Antonio, TX 78212
- Planned Parenthood - Babcock Clinic
104 Babcock Rd., San Antonio, TX 78201
- Reproductive Services
5838 Joiner, San Antonio, TX 78238
- Whole Women's Health
4025 E Southcross Blvd., San Antonio, TX 78222
- Woman's Choice Quality Health
920 San Pedro Ave. # 100, San Antonio, TX 78212
- Audre Rapoport Women's Health Center-Planned Parenthood
1121 Ross Ave., Ste. A, Waco, TX 76706
- Planned Parenthood South Austin
201 East Ben White Blvd., Austin, TX 78704
- Planned Parenthood Surgical Services of North Texas
7424 Greenville Ave. # 211, Dallas, TX 75231

- Henderson Clinic-Planned Parenthood
301 S. Henderson St., Ste A, Fort Worth, TX 76104
- Midland Byerley Center-Planned Parenthood
316 Secor, Midland, TX 79701
- San Angelo Planned Parenthood
2010 Pecos, San Angelo, TX 76902
- Planned Parenthood - Babcock Clinic
104 Babcock Rd., San Antonio, TX 78201
- Planned Parenthood Bandera Rd. Sexual Healthcare
6749 Bandera Road, San Antonio, TX 78238
- Planned Parenthood Northeast Sexual Healthcare
11514 Perrin Beitel, San Antonio, TX 78217
- Planned Parenthood Center for Choice
3727 Greenbriar, Ste. 118-B, Stafford, TX 77477

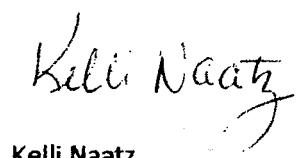
I would appreciate it if you could send the documents to me in digital format at the following e-mail address: kelli.naatz@heidigroup.org

If that is not possible, please fax them to 512.255.2582 or mail them to me at the following address:

Kelli Naatz
820 S. 4th Ave apt. 201
Albert Lea, MN 56007

Thank you very much for your help with processing this request.

Sincerely,


Kelli Naatz



Department of State Health Services
Sherry Mansell, Public Information Coordinator
P.O. Box 149347 (Mail Code 1919)
Austin, TX 78714-9347

RECEIVED

JUN 10 2013

OPEN RECORDS DIVISION

OP-480372-13

496812

May 31, 2013

Dear Ms. Mansell:

On November 16th, 2012 I made a request for documents under the Texas Public Information Act. This request sought Health Facility Licensing and Compliance Enforcement Action reports for inspections completed at a number of abortion clinics taking place between January 1, 2010 and the present.

In response to the request, I received a copy of a letter sent from Marc Allen Connelly, Assistant General Counsel of the Department of State Health Services (DSHS) to the Attorney General's office, dated December 21st, 2012. This letter asked for clarification of what information could be released.

The Attorney General's office issued its response on March 4th, 2013. The letter states on page 4, "Accordingly, the department must withhold the highlighted information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code. The remaining information must be released".

On Monday, May 27th 2013, I received the inspection records for all except 12 clinics from you. In my understanding of the letter from DSHS to the Attorney General's office sent on December 21, 2012, the highlighted section is exhibit B and only contains information from three clinics. The Attorney General's office did say that information may be withheld. I then expected to receive all reports except from those highlighted three clinics in exhibit B. However, there are 12 additional clinics where copies of the inspection reports were not included. I'm requesting an explanation of why these 12 clinic reports were withheld; otherwise I'd appreciate these inspection reports be sent to me.

The clinics that I did not receive reports for were:

- Aaron Women's Clinic
5607 Schumacher Lane, Houston, TX 77057
- Abortion Advantage
1929 Record Crossing Rd., Dallas, TX 75235
- Affordable Women's Medical Center
7007 North Freeway – Houston, TX 77076

P.O. Box 2050
Round Rock, Texas 78680
Tel: 512.255.2088
Fax 512.255.2582

info@heidigroup.org
www.heidigroup.org

- **Audre Rapoport Women's Health Center-Planned Parenthood**
1121 Ross Ave., Ste. A, Waco, TX 76706
- **Bryan Health Center-Planned Parenthood**
4112 E. 29th St, Ste 200, Bryan, TX 77802
- **Planned Parenthood (formerly Aaron Women's Health Center)**
3302 67th St., Lubbock, TX 79413
- **Office of Dr. Eduardo L Aquino & Dr. Keno**
1901 Morgan Ave., Corpus Christi, TX 78404
- **Planned Parenthood Center for Choice**
3727 Greenbriar, Ste. 118-B, Stafford, TX 77477
- **Southwestern Women's Surgery Center**
8616 Greenville Ave. Ste 101, Dallas, TX 75243
- **Woman's Choice Quality Health**
920 San Pedro Ave. # 100, San Antonio, TX 78212
- **Women's Medical Center**
17070 Red Oak # 505, Houston, TX 77090
- **Women's Services**
4315 Lockwood Dr. # 1, Houston, TX 77026

Respectfully,

Kelli Naatz

Enclosures

Cc: Amanda Crawford
Office of the Attorney General - Open Records Division
209 W, 14th Street, 6th Floor
Austin, Texas 78701



November 16, 2012

Texas Department of State Health Services
Facility Licensing Group/ MC 2835
Pamela Adams, Program Specialist
P.O. Box 149347
Austin, TX 78714-9347

Dear Ms. Adams:

I am making a request for documents under the Texas Public Information Act.

I am seeking Health Facility Licensing and Compliance Enforcement Action reports for the following abortion clinics for inspections that took place between January 1, 2010 and present.

- Austin Women's Health Center
1902 S. I.H. 35, Austin, TX 78704
- International Healthcare Solutions
9805 Anderson Mill Rd., Austin, TX 78750
- Planned Parenthood South Austin
201 East Ben White Blvd., Austin, TX 78704
- Whole Women's Health of Austin
8401 N. I.H. 35, Austin, TX 78753
- Whole Women's Health
440 18th St. Beaumont, TX 77706
- Bryan Health Center-Planned Parenthood
4112 E. 29th St, Ste 200, Bryan, TX 77802
- Office of Dr. Eduardo L Aquino & Dr. Keno
1901 Morgan Ave., Corpus Christi, TX 78404
- Abortion Advantage
1929 Record Crossing Rd., Dallas, TX 75235
- Northpark Medical Group
8363 Meadow Rd., Dallas, TX 75231
- Planned Parenthood Surgical Health Services of North Texas
7424 Greenville Ave. # 211, Dallas, TX 75231

P.O. Box 2050
Round Rock, Texas 78680
Tel: 512.255.2088
Fax 512.255.2582

info@heidigroup.org
www.heidigroup.org

- **Routh Street Women's Clinic**
4321 N. Central Expressway, Dallas, TX 75235
- **Southwestern Women's Surgery Center**
8616 Greenville Ave. Ste 101, Dallas, TX 75243
- **Hilltop Women's Reproductive Center**
500 E. Schuster Ave. # B, El Paso, TX 79902
- **Reproductive Services**
730 E. Yandell Dr., El Paso, TX 79902
- **Henderson Clinic-Planned Parenthood**
301 S. Henderson St., Ste A, Fort Worth, TX 76104
- **Whole Women's Health, (formerly Trinity Valley Women's Center)**
1717 S. Main St. – Fort Worth, TX 76110
- **West Side Clinic**
2011 Las Vegas Trail, Fort Worth, TX 76108
- **Reproductive Services**
613 W. Sesame Dr., Harlingen, TX 78550
- **A Affordable Women's Medical Center**
7007 North Freeway – Houston, TX 77076
- **AAA Concerned Women's Center**
7324 Southwest Frwy, Houston, TX 77074
- **Aaron Women's Clinic**
5607 Schumacher Lane, Houston, TX 77057
- **Texas Ambulatory Surgical Center (Aaron Women's Surgical Center)**
2505 North Shepherd, Houston, TX 77008
- **Alto Women's Center**
6671 Southwest Freeway STE 450, Houston, TX 77074
- **Houston Women's Clinic**
4820 San Jacinto St., Houston, TX 77004
- **Planned Parenthood Center For Choices Surgical Services**
4600 Gulf Fwy, Ste 300, Houston, TX 77023
- **Suburban Women's Clinic**
3101 Richmond Ave. # 250, Houston, TX 77098

- Women's Medical Center
17070 Red Oak # 505, Houston, TX 77090
- Women's Services
4315 Lockwood Dr. # 1, Houston, TX 77026
- Killeen Womens Health Center (formerly Aaron Women's Health Center)
3106 S WS Young Blvd, Bldg C, Ste 302, Killeen, TX 76542
- Planned Parenthood (formerly Aaron Women's Health Center)
3302 67th St., Lubbock, TX 79413
- Whole Women's Health of McAllen
802 S. Main St., McAllen, TX 78501
- Midland Byerley Center-Planned Parenthood
316 Secor, Midland, TX 79701
- Alamo Women's Clinic
8600 Wurzbach Rd. # 900E, San Antonio, TX 78240
- All Women's Medical Center
8600 Wurzbach Rd. # 1206, San Antonio, TX 78240
- New Women's Clinic
419 San Pedro Ave., San Antonio, TX 78212
- Planned Parenthood - Babcock Clinic
104 Babcock Rd., San Antonio, TX 78201
- Reproductive Services
5838 Joiner, San Antonio, TX 78238
- Whole Women's Health
4025 E Southcross Blvd., San Antonio, TX 78222
- Woman's Choice Quality Health
920 San Pedro Ave. # 100, San Antonio, TX 78212
- Audre Rapoport Women's Health Center-Planned Parenthood
1121 Ross Ave., Ste. A, Waco, TX 76706
- Planned Parenthood South Austin
201 East Ben White Blvd., Austin, TX 78704
- Planned Parenthood Surgical Services of North Texas
7424 Greenville Ave. # 211, Dallas, TX 75231

- Henderson Clinic-Planned Parenthood
301 S. Henderson St., Ste A, Fort Worth, TX 76104
- Midland Byerley Center-Planned Parenthood
316 Secor, Midland, TX 79701
- San Angelo Planned Parenthood
2010 Pecos, San Angelo, TX 76902
- Planned Parenthood - Babcock Clinic
104 Babcock Rd., San Antonio, TX 78201
- Planned Parenthood Bandera Rd. Sexual Healthcare
6749 Bandera Road, San Antonio, TX 78238
- Planned Parenthood Northeast Sexual Healthcare
11514 Perrin Beitel, San Antonio, TX 78217
- Planned Parenthood Center for Choice
3727 Greenbriar, Ste. 118-B, Stafford, TX 77477

I would appreciate it if you could send the documents to me in digital format at the following e-mail address:

If that is not possible, please fax them to 512.255.2582 or mail them to me at the following address:

Kelli Naatz
820 S. 4th Ave apt. 201
Albert Lea, MN 56007

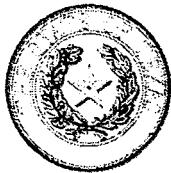
Thank you very much for your help with processing this request.

Sincerely,



Kelli Naatz

Kelli Naatz



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

P.O. Box 149347
Austin, Texas 78714-9347
1-888-963-7111
TTY: 1-800-735-2989
www.dshs.state.tx.us

December 21, 2012

Via INTER AGENCY MAIL

Amanda Crawford
Office of the Attorney General-Open Records Division
209 W. 14th Street, 6th Floor
Austin, Texas 78701

Re: Request regarding reports for abortion clinics from Kelli Naatz
DHS File: 020944/2012

Dear Ms. Crawford:

By this letter, the Texas Department of State Health Services (DHS or department) requests an opinion from the Office of the Attorney General of Texas (OAG) whether certain portions of the surveys or inspection reports of two abortion facilities in Texas are exempt from disclosure under the Texas Public Information Act (Act), Chapter 552 of the Texas Government Code. TEX. GOV'T CODE §552.301.

Attached as Exhibit A is a request for information from Kelli Naatz, which the department received on November 20, 2012. Ms. Naatz has requested a copy of the most current inspection reports for listed abortion clinics and inspections that took place between January 1, 2010 and the present. Some of the facilities are ASCs that do abortions. More specifically for reports on Planned Parenthood of Austin, Texas ASC, Inc., Whole Women's Health of San Antonio. The three inspection reports are attached as Exhibit B.

Abortion facilities in Texas are governed by Chapter 245 of the Texas Health and Safety Code (HSC) and Title 25, Chapter 139, of the Texas Administrative Code (TAC). The Department asserts that those portions of the two reports, Exhibit B, that are highlighted are confidential pursuant to HSC § 245.011(d) and may not be disclosed. This section of the HSC Code states:

(d) Except as provided by Section 245.023, all information and records held by the department under this chapter are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

December 21, 2012

- (1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;
- (2) with the consent of each person, patient, and abortion facility identified in the information released;
- (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or
- (4) to appropriate state licensing boards to enforce state licensing laws.

As Ms. Naatz has not and can not meet the limited exceptions 1 through 4 above which permit disclosure, the department may not release those portions of Exhibit B, the reports, which are highlighted.

Further, a review of Exhibit B also will show that the highlighted portions of the two surveys do not fall within the limited exemption of section 245.023(a)(2) of the HSC (recognized under section 245.011(d)), which requires disclosure. HSC § 245.023(a)(2) provides, in pertinent part, that "any violation discovered during that [last] inspection that would *pose a health risk to a patient at the facility*" is to be disclosed. [Emphasis added.] A violation of this kind, as well as "any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation," also are to be disclosed. TEX. HEALTH & SAFETY CODE § 245.023(a)(2).

The department takes the position that most violations of its abortion facility rules "*pose a health risk to a patient at the facility*," and, therefore, are to be disclosed. [Emphasis added.] In particular, the Department routinely discloses those portions of inspection reports citing violations of the following rules governing abortion facilities: 25 TAC §§ 139.41; 139.42(a)(1) and (2); 139.44; 139.46 through 139.49; 139.51 through 139.54; and 139.56 through 139.60. The only violations the department has determined do *not* pose a health risk to a patient at the facility – and therefore are not required to be disclosed -- are those regarding the following rules: 25 TAC §§ 139.42(a)(3) and (b); 139.43; 139.45; 139.50; and 139.55. Those portions of the two inspection reports that are highlighted address violations and corrective action plans analogous to violations of rule 25 TAC § 139.50 titled "Disclosure Requirements". This rule sets forth certain information the facility is to provide to a woman on whom an abortion is to be performed during the initial visit.

Because the information highlighted on Exhibit B addresses violations that are similar to violations of disclosure rule 25 TAC § 139.50, violations that do *not* pose a health risk, the information fails to qualify as an exemption under HSC § 245.023(a)(2) from the broad confidentiality provision of HSC § 245.011(d). Thus, those portions of the two inspection reports which are highlighted in Exhibit B are confidential by law. TEX. HEALTH & SAFETY CODE § 245.011(d); TEX. GOV'T CODE § 552.101.

The Department asserts that the reasons for withholding the information are compelling. The presumption in favor of disclosure is overcome because the requested information is confidential as a matter of law pursuant to the following statutes: TEX. HEALTH & SAFETY CODE § 245.011(d) and TEX. GOV'T CODE § 552.101.

The Department asks the Attorney General for a decision on the confidentiality of those portions of Exhibit B which have been highlighted. If you have questions, please feel free to contact me at (512) 776-6683.

Respectfully,



Marc Allen Connelly
Assistant General Counsel

DHHS File: 021087/2012

Enclosures

cc: Kelli Naatz
820 S. 4th Ave. Apt. 201
Albert Lea, MN 56007
(without enclosures)

To the Requester: The Department seeks to withhold the requested information as described above. The Department has asked the Attorney General to determine whether the information falls within an exception to public disclosure. This letter is your copy of the Department's written communication to the Attorney General.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2013

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2013-03610

Dear Mr. Connelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 480372 (DSHS File 020944/2012).

The Texas Department of State Health Services (the "department") received a request for inspection reports for certain named abortion clinics during a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(a), (b).* In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the department received the request for information on November 20, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was December 6, 2012, and its fifteen-business-day deadline was December 13, 2012. However, you did not request a ruling from this office or submit the information at issue until December 21, 2012. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the department's claim under section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument under this exception.

Next, we note you have not submitted responsive inspection reports for four of the named abortion clinics. Thus, to the extent any such information existed when the department received the present request, we assume it has been released. If such information has not been released, you must do so at this time. *See Gov't Code §§ 552.301, .302, see also* Open Records Decision No. 664 (2000) (if governmental body determines no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the Texas Abortion Facility Reporting and Licensing Act, chapter 245 of the Health and Safety Code. Section 245.011(d) provides:

Except as provided by Section 245.023, all information and records held by the department under [chapter 245 of the Health and Safety Code] are confidential and are not open records for the purposes of [the Act]. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;
- (2) with the consent of each person, patient, and abortion facility identified in the information released;
- (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or
- (4) to appropriate state licensing boards to enforce state licensing laws.

Health & Safety Code § 245.011(d). Section 245.023 of the Health and Safety Code provides in part:

(a) The department on request shall make the following information available to the public:

- (1) the status of the license of any abortion facility;
- (2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and
- (3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

...

(e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

Id. § 245.023(a), (e). You state the information you have highlighted, which pertains to abortion facilities, is governed by chapter 245 of the Health and Safety Code. You assert the current request does not fall within the four types of disclosure permitted under

section 245.011(d) and the information is not subject to section 245.023. Accordingly, the department must withhold the highlighted information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 480372

Enc. Submitted documents

c: Requestor
(w/o enclosures)



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

P.O. Box 149347
Austin, Texas 78714-9347
1-888-963-7111
TTY: 1-800-735-2989
www.dshs.state.tx.us

May 24, 2013

Via U.S.P.S. Express Mail EE590983405US

Kelli Naatz
820 S. 4th Ave. Apt. 201
Albert Lea, MN 56007

RE: OR2013-03610 / DSHS File: 02094/2012

Dear Ms. Naatz:

On November 20, 2012, the Texas Department of State Health Services (DSHS) received your request for public information named abortion facilities. A copy of your original request is enclosed.

On December 21, 2012, the Department submitted a letter with a copy of the request submitted to the Attorney General advising that upon receipt of the letter ruling, the Department would comply and complete processing your request. The Attorney General issued its letter ruling OR2013-03610 a copy of the decision of the Attorney General is attached.

All information that the Attorney General letter ruling OR2013-03610 has determined are not excepted from required public disclosure are enclosed with this letter in accordance with the letter ruling. Your request submitted on November 20, 2012, is considered closed.

If you have any questions or wish to discuss this matter further, please contact me directly at (512) 776-3835 or by e-mail at Sherry.Mansell@dshs.state.tx.us.

Sincerely,

Sherry D Mansell
Sherry D. Mansell, DSHS Public Information Coordinator
Office of General Counsel

Enclosure: Original Request
 Copy of Request for OAG Ruling
 Copy of OR2013-03610



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2016

Ms. Jessica Vu
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2016-23579

Dear Ms. Vu:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. Your request was assigned ID# 632187 (OOG ID# 16-253).

The Office of the Governor (the “governor’s office”) received a request for all e-mails sent or received by governor’s office staff pertaining to two specified entities or a named individual during a specified time period. You claim some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. You also state you notified the Texas Health and Human Services Commission of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov’t Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” *Id.* § 552.111. This exception encompasses the deliberative process privilege. *See Open Records Decision No. 615 at 2 (1993).* The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630

S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You seek to withhold the information you marked under section 552.111 of the Government Code. You state the information at issue consists of advice, opinions, and recommendations of employees and officials of the governor's office regarding policymaking matters. Upon review, we find the governor's office may withhold the information you marked under section 552.111 of the Government Code. As you raise no further exceptions, the governor's office must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 632187

Enc. Submitted documents

c: Requestor
(w/o enclosures)

RECEIVED

AUG 25 2016

OPEN RECORDS DIVISION

OR 632187-16
632187



GOVERNOR GREG ABBOTT

August 25, 2016

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: OPEN RECORDS LETTER RULING REQUEST
OOG ID#: 16-253

Dear Mr. Gordon:

On August 11, 2016, the Office of the Governor (“OOG”) received a public information request under the Texas Public Information Act (“PIA”), Chapter 552, Government Code, from Edgar Walters. A copy of the request is attached as Exhibit A.

The OOG asserts portions of the responsive information are excepted from required public disclosure under the PIA. Pursuant to section 552.301(a) of the Government Code, this brief is submitted to seek a decision as to whether section 552.111 of the Government Code applies to the information at issue. This information is attached as Exhibit B. The OOG has also notified the Texas Health and Human Services Commission (“HHSC”) of the request pursuant to section 552.305 of the Government Code, to allow it an opportunity to submit arguments against release of the information at issue, which is attached in both Exhibits B and C. The OOG has copied the requestor as a recipient of this brief pursuant to sections 552.301(d) and 552.301(e-1) of the Government Code.

I. Information Excepted From Required Public Disclosure Under Section 552.111: Deliberative Process Privilege

Section 552.111 of the Government Code excepts from required public disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. Your office has construed section 552.111 to encompass the deliberative process privilege by excepting from disclosure internal communications consisting of advice, recommendations, or opinions reflecting the policy making processes of a governmental body. Tex. Att’y Gen. ORD-615 at 5 (1993); *accord City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 556 (Tex. App.—Dallas 1998) (“Section 552.111 . . . excepts only those internal communications consisting of advice, recommendations, and opinions reflecting the policy-making processes of the governmental body at issue.”),

affirmed, 22 S.W.3d 351 (Tex. 2000). But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See Tex. Att'y Gen. ORD-313* at 3 (1982). The purpose of section 552.111 is “to protect advice and opinions on policy matters and to encourage frank and open discussion within an agency in connection with its decision-making processes.” *Dallas Morning News*, 969 S.W.2d at 556. Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See Tex. Att'y Gen. ORD-561* at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process).

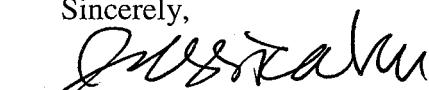
Your office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See Tex. Att'y Gen. ORD-559* at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

The information marked within Exhibit B consists of communications between and among OOG policy directors, analysts, and employees, communicating in their policy-making capacities. It includes a document with written impressions of an OOG employee that reflect OOG employees' opinions, recommendations, and advice on various policy matters. Therefore, the OOG asserts the information marked is excepted from disclosure under section 552.111 of the Government Code and the deliberative process privilege.

II. Conclusion

On behalf of the OOG and pursuant to section 552.301 of the Government Code, I respectfully request an open records letter ruling as to the applicability of the above raised exceptions. If you have any questions or need additional information, please contact me at (512) 463-8470.

Sincerely,


Jessica Vu

Assistant General Counsel
Office of Governor Greg Abbott

cc: Edgar Walters
(without The Texas Tribune
Exhibits) 823 Congress Ave., Suite 1400
Austin, TX 78701

Jonathan Miles
Open Government Attorney
Health and Human Services Commission
P.O. Box 149030
Austin, TX 78714

Attachments: Exhibit A – Copy of original request
Exhibit B – Information at issue (partially sent to HHSC)
Exhibit C – Information sent to HHSC

EXHIBIT A

Johanna Meade

From: Edgar Walters <
Sent: Thursday, August 11, 2016 3:08 PM
To: Public Records
Subject: Open records request re: Heidi Group

Dear open records administrator,

Under all laws that guarantee access to public records, please provide me with the following:

—Any and all emails sent or received by Office of the Governor staff in 2016 related to the Heidi Group, Carol Everett, or the Healthy Texas Women program.

If you have any questions, please don't hesitate to contact me.

Best,
Edgar

Edgar Walters

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